

REMARKS

In the pending Office Action, Examiner Davis rejected each of claims 8-11, 41-42, 46, 48, and 51-60, and withdrew claims 45 and 47 from consideration. In response, claims 8, 41, 42 and 51 have been amended, as indicated above, and are believed to be in condition for allowance for at least the reasons given below.

A first rejection of claims 8-11, 41, 46, 48 and 55-57 was made under section 112, first paragraph, alleging that the language "wherein said mounting bracket is separate from at least one of said cross supports" is not supported. Respectfully, this ground for rejection is traversed. "To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention." MPEP 2163 (citing Moba, B.V. v. Diamond Automation, Inc., 325 F.3d 1306, 1319 (Fed. Cir. 2003)). Claim language need not be included verbatim in the specification. Id. Rather, an applicant "shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention." Id. (citing Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1572, (Fed. Cir. 1997)). Figure 3 of the application clearly shows brackets 42 that are above and apart or separate from the supports 39. The paragraph beginning at page 6, line 22 speaks of cross-supports 39 that extend between pedicle screws. The cross-supports have brackets 32 that are placed on or carried by them, as described in that paragraph, which brackets carry a support rod. One of ordinary skill in this art at the time of the filing of this application would have appreciated from at least those parts of the description and drawings that a bracket for a rod can be separate from at least one of the recited cross-supports.

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Regarding the rejections over the Yuan, Ray and Wu references, the applicability and interpretation of those references with respect to the pending claims is not conceded. To move this application more quickly to allowance, however, amendments have been made to claims 8, 41, 42 and 51, and for at least the reasons noted below, the claims distinguish over each of those references.

Each of those claims recite pedicle screws each having a multi-axial head and a stem, the head having two branches defining a channel, and the cross-supports' ends are seated in such channels. That language is supported in the specification by at least Figure 3 and the paragraphs that begin on page 6 of the application. The multi-axial head and stem are referred to at the end of the first paragraph on page 6, with a cross-reference to the description in the third paragraph that begins on that page. The branches and channel are clearly shown in the perspective view of Figure 3, as is the seated relationship between the cross-supports 39 and the channels of the screws. Accordingly, the requirements of section 112, first paragraph, are met.

The Yuan reference does not show at least a multi-axial head as recited in the claims. Screw 30 of the Yuan reference has a "bifurcated connector" 36 that "forms an integral part of its associated pedicle screw." See Yuan, column 5, lines 13-17.) Thus, the "bifurcated connector" or head portion of the Yuan screw is fixed, not multi-axial, with respect to its shaft. Moreover, Yuan states that it is an "important feature" to use the "bifurcated connector 36 as part of each pedicle screw," id (emphasis added), clearly advocating use of that integral head portion and shaft portion.

Similarly, the Ray reference includes only screws that have integral heads and shafts. As seen in Figures 2-5 of Ray, the reference shows pedicle screws 30, 31, 40 and 41, having bolts that are locked to plates via nuts 62, as well as screws 188 with integral heads 190. None of

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these items have multi-axial heads and stems as recited in the claims. Further, none of those screws include branches that define a channel for having an arm of a cross-support inserted therein. There is no reason to replace the screws in Ray with screws having multi-axial branched heads because the plates of Ray are not designed for and cannot be used with such screws.

The Wu reference discloses screws 60 that have recesses 67 that fit between arms on one side of an apparatus 10. There is no head on the screws 60 that can be characterized as multi-axial with respect to its stem, and screws 60 do not include channels for arms of cross-supports. Part 61 appears to have an opening for a threaded rod placed along the spine, not as a cross-support. The only part of Wu that could be compared to the recited cross-supports, item 10, does not have arms that sit in channels in a multi-axial head. Since part 61 of Wu sits in a channel between arms of item 10, changing part 61 into a multi-axial head would require reconfiguration of item 10. The side portions of item 10 are not intended for placement inside a head, and placement of a head between the arms of item 10 would eliminate any multi-axial quality it may have.

Consequently, for at least the reasons given above, the amended claims not only are not anticipated by the Yuan, Ray or Wu references, but one of ordinary skill in this art would find no motivation to change them to include multi-axial-head screws. All of the language in the claims is supported, under the standards of section 112, by the specification and drawings of this application. It is respectfully requested that the claims be reconsidered and passed to allowance.

Finally, the cover sheet for the pending office action indicated that claims 45 and 47 were withdrawn from consideration, but the remainder of the office action did not discuss those claims at all. Both of those claims depend from claim 41, which is allowable at least for the

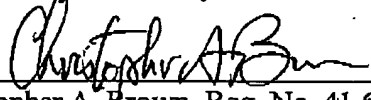
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reasons discussed above. With specific reference to claim 47, the Examiner is directed to the third paragraph beginning on page 6, which spills over onto page 7. That paragraph specifically notes that the apparatus of Figure 3, which was elected earlier in this case, can be used with screws in a medialized orientation. Because claim 41 links claims 45 and 47, and because claim 47 is supported by Figure 3 and its description, claims 45 and 47 should be considered and allowed.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the office action but are simply provided to address the rejections made in the office action in the most expedient fashion. Applicant reserves the right to later contest positions taken by the examiner that are not specifically addressed herein. Applicant intends that the claims herein have the full scope permitted by their language, including a full range of equivalents.

In conclusion, Examiner Davis is respectfully requested to reconsider this application as amended and in light of the foregoing remarks, and a Notice of Allowance in this case is hereby respectfully requested. The examiner is invited to call the undersigned attorney if there are any further issues to be resolved.

Respectfully submitted,

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